Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
The Pay Telephone Reclassification And Compensation Provisions of The Telecommunications Act of 1996	)	**CC Docket No. 96-128**
RBOC/GTE/SNET Payphone Coalition Petition for Clarification	)	**File No. NSD-l-99-34**

COMMENTS OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"),[1] through undersigned counsel and pursuant to *Public Notice*, DA 01-1967 (released August 20, 2001), hereby submits the following comments on the Petition for Clarification and/or Reconsideration filed by AT&T Corp. ("AT&T"), the Petition for Declaratory Ruling and Petition for Reconsideration filed by WorldCom, Inc. ("WorldCom"), and the Petition for Reconsideration and Clarification filed by Global Crossing Telecommunications, Inc. ("Global Crossing"), in the captioned proceedings on May 29, 2001. Each of AT&T and WorldCom urge the Commission to completely redefine a "completed call" as that term is applied within the context of the agency's payphone compensation regime and Global

[1] ASCENT is a national trade association representing smaller providers of competitive telecommunications and information services. ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services. ASCENT is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

Crossing joins AT&T and WorldCom in urging the Commission to substantially relax the reporting requirements newly-adopted by the Commission in its *Second Order on Reconsideration*, FCC 01-109, released in this proceeding on April 5, 2001. Global Crossing also urges the Commission to (i) adopt a timing surrogate to facilitate determination of those multi-switch calls which have been completed to the called parties, (ii) limit contractual payment arrangements between interexchange carrier ("IXCs") and payphone service providers ("PSPs") to those instances in which the contracting IXC has the obligation to directly compensate the PSP, and (iii) bar PSPs from invoicing IXCs for amounts purportedly due for originating traffic on payphone facilities. ASCENT opposes, on both procedural and substantive grounds, the requested redefinition of "completed calls," generally supports the requested relaxation of the *Second Order on Reconsideration's* newly-adopted reporting requirement, and endorses the additional clarifications sought by Global Crossing. Finally, ASCENT urges the Commission to initiate a rulemaking proceeding to evaluate Global Crossing's proposed use of a timing surrogate to facilitate identification of completed calls.

A. The Commission Cannot Redefine "Completed Calls" Without First Issuing a Notice of Proposed Rulemaking

Section 553 of the Administrative Procedure Act ("APA") requires full notice and comment rulemaking as a prerequisite to substantial modification of existing rules.[2] "An amendment is proper only when adequate notice is provided to affected parties pursuant to appropriate rulemaking procedures."[3] In order "to increase public participation and fairness in

[2] 5 U.S.C. ¶ 553.

[3] Montgomery Ward & Co., Incorporated v. Federal Trade Commission, 691 F.2d 1322, 1329 (9th Cir. 1982).

agency decisionmaking and to establish a mechanism by which an agency can improve its own informational base," courts have "'consistently declined to allow the exceptions [to notice and comment rulemaking requirements] itemized in § 553 to swallow the APA's well-intentioned directive."[4] The Section 553(b)(3) exceptions "cannot apply . . . where the agency action trenches on substantive rights and interests."[5]

It is well settled that an agency may not constructively rewrite a rule by reinterpreting it.[6] Sanctioning such conduct would "render the requirements of [Section] 553 basically superfluous

in legislative rulemaking by permitting agencies to alter their requirements for affected public members at will through the ingenious device of 'reinterpreting' their own rule."[7] "[T]he procedural guarantees of notice and comment . . . would not be meaningful if an agency could effectively, constructively amend regulations by means of nonobvious readings without giving the affected

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[4] National Family Planning & Reproductive Health Association, Inc. v. Sullivan, 979 F.2d 227, 240 (D.C. Cir. 1992), *quoting* American Hospital Association v. Bowen, 834 F.2d 1037, 1044 (D.C. Cir. 1987).

[5] National Association of home Health Agencies v. Schweiker, 690 F.2d 932, 240 (D.C. Cir. 1982), *cert. denied* 103 S.Ct. 1193 (1983), *quoting* Batterton v. Marshall, 648 F.2d 694, 708 (D.C. Cir. 1980).

[6] National Family Planning and Reproductive Health Association, Inc. et al. v Sullivan, 979 F.2d 227 at 231 ("When an agency promulgates a legislative regulation by notice and comment directly affecting the conduct of . . . members of the public and, on challenge, to the . . . Court, it may not subsequently repudiate that announced meaning and substitute for it a totally different meaning without proceeding through the notice and comment rulemaking normally required for amendments of a rule.")

[7] Id.

parties an opportunity either to affect the content of the regulations at issue or at least to be aware of the scope of their demands."[8]

The definition of "completed calls" of which AT&T and WorldCom complain was adopted in the initial *Report and Order* issued in this proceeding. In that decision, the Commission, having reasoned that Section 276(b)(1)(A) required it to "determine what constitutes a 'completed' call for purposes of per-call compensation," declared unequivocally that "a 'completed call' is a call that is answered by the called party."[9] Such a holding, the Commission emphasized, not only fulfilled the statutory mandate, but was fully consistent with agency precedent.[10]

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[8] Secretary of Labor v. Western Fuels-Utah, Inc., 900 F.2d 318, 327 (D.C. Cir., 1990).

[9] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), 11 FCC Rcd. 20541, ¶ 63 (1996) (*subsequent history omitted*).

[10] Id. ("We have previously found that, where an 800 calling card call is routed through an IXC's platform, it should not be viewed as two distinct calls – one to the platform and one to the called party.").

The Commission's definition of a "completed call" as one which is answered by the called party was not challenged in any of the multiple petitions that sought reconsideration of the *First Report and Order*. While Cable & Wireless, Inc. ("Cable & Wireless") asked the Commission to "allow carriers to treat calls re-originated within . . . [a switch-based reseller's] platform as a single compensable call," rather than as "separate calls for compensation purposes," neither Cable & Wireless nor any other entity questioned the underlying determination that a call would not be deemed completed until answered by the called party.[11] The Commission, accordingly, did not revisit its definition of a "completed call" in its *Order on Reconsideration*.[12] Nor did the Commission revisit this matter in the *Second Report and Order* or the *Third Report and Order* issued in this proceeding.[13] Hence, the Commission's definition of a "completed call" within the context of its payphone compensation regime became final five years ago.

The requests of AT&T and WorldCom that the Commission reconsider its definition of "completed calls," accordingly, must be dismissed as filed grossly out of time. If these entities desire to effect a change in the Commission's definition of "completed calls" within its payphone compensation regime, they can advocate such a change by filing a petition for rulemaking. And if the Commission were to concur that such an action might be appropriate, it can initiate a rulemaking proceeding to assess the merits of the proposed change. What the Commission cannot do, however,

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[11] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Order on Reconsideration), 11 FCC Rcd. 21233, ¶ 54 (1996) (*subsequent history omitted*).

[12] Id.

[13] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Second Report and Order), 13 FCC Rcd. 1778 (1997) (*subsequent history omitted*); Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Third Report and Order), 14 FCC Rcd. 2545 (1999) (*subsequent history omitted*). .

is constructively rewrite its payphone compensation rules through the artifice of reinterpretation.[14]

B. The Commission Should Not, and Should Not Permit Large Network-Based IXCs to, Redefine "Completed Calls"

[14] National Family Planning and Reproductive Health Association, Inc. et al. v Sullivan, 979 F.2d 227 at 231.

As noted above, the Commission, in its *First Report and Order* in this proceeding, recognized that "because Section 276(b)(1)(A) mandates compensation for 'each and every c*ompleted* intrastate and interstate call'," a determination of "what constitutes a 'completed' call for purposes of per-call compensation" was required.[15] In making the requisite determination, the Commission sought to define a "completed call" within the context of its payphone compensation regime in a manner consistent with its treatment of calls in comparable circumstances. To this end, the Commission reviewed its treatment of 800 calls which traverse switching facilities of multiple IXCs. Having noted that its previous finding that "where an 800 calling card call is routed through an IXC's platform, it should not be viewed as two distinct calls -- one to the platform and one to the called party," the Commission concluded that within its payphone compensation regime, a "completed call" would necessarily be "a call that is answered by the called party."[16]

As the Commission had earlier explained, interstate communications extend "from the inception of a call to its completion, regardless of any intermediate facilities."[17] Thus "an interstate communication does not end at an intermediate switch."[18] And because a caller "intends to make a single call terminating . . . at the telephone line of the called party," this principal applies "regardless of whether . . . [the] caller must dial a second number at some point before the call is completed."[19]

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[15] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), 11 FCC Rcd. 20541 at ¶ 63 (emphasis in original).

[16] Id. (citing Teleconnect Co. v. Bell Telephone Company of Pennsylvania (Memorandum Opinion and Order), 10 FCC Rcd. 1626, 1629 (1995)).

[17] Teleconnect Co. v. Bell Telephone Company of Pennsylvania (Memorandum Opinion and Order), 10 FCC Rcd. 1626, ¶ 12 (1995) (*subsequent history omitted*).

[18] Id.

[19] Id. at ¶ 14.

The assessment that "the end-to-end nature of the communications [is] more significant than the facilities used to complete such communications" has been consistently applied by the Commission and endorsed by the Courts.[20] For example, the Commission, in asserting jurisdiction over voice mail service accessible by "out-of-state call[s]," rejected claims that "when the voice mail service is accessed from out-of-state, two jurisdictional transactions take place: one from the caller to the telephone company switch that routes the call to the intended recipient's location . . . and another from the switch forwarding the call to the voice mail apparatus and service," declaring that its jurisdiction "does not end at the local switch but continues to the ultimate termination of the call."[21] And elsewhere, the Commission rejected the argument that "a credit card call should be treated for jurisdictional purposes as two calls: one from the card user to the interexchange carrier's switch, and another from the switch to the called party," and concluded that "switching at the credit card switch is an intermediate step in a single end-to-end communication."[22]

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[20] Id. at ¶ 12.

[21] Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation (Memorandum Opinion and Order), 7 FCC Rcd. 1619, ¶¶ 8, 12 (1992) (*subsequent history omitted*).

[22] Southwestern Bell Telephone Company, Transmittal Nod. 1537 and 1560, Revisions to Tariff F.C.C. No. 68 (Order Designating Issues for Investigation), 3 FCC Rcd. 2339, ¶¶ 25, 28 (1988) (*subsequent history omitted*). *See also* Florida Public Telecommunications Association v. Federal Communications Commission, 54 f.3d 857, 859 - 60 (D.C. Cir. 1995).

More recently, the Commission has reaffirmed its view that calls do not terminate at intermediate switches. Thus, in initially asserting jurisdiction over traffic delivered to Internet service providers ("ISPs"), the Commission reaffirmed its long-held assessment that "communications should be analyzed on an end-to-end basis, rather than by breaking the transmission into component parts."[23] Emphasizing that it has "consistently rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers," the Commission ruled that "communications . . . do not terminate at the ISP's local server . . . but continue to the ultimate destination or destinations."[24] And while it remanded the Commission's decision, the U.S. Court of Appeals for the District of Columbia Circuit nonetheless recognized that "the Commission historically has been justified in relying on . . . [an end-to-end] method when determining whether a particular communication is jurisdictionally interstate."[25]

AT&T and WorldCom ask the Commission to ignore this long-standing precedent and determine that for payphone compensation purposes, calls which traverse an intermediate switch or platform will be deemed to terminate at the intermediate switching point. For jurisdictional and all other purposes, calls will be treated as end-to-end communications extending from the calling party to the called party, but for payphone compensation purposes, and for payphone compensation purposes alone, transmissions will be broken into their component parts. Obviously, such a parsing cannot be justified; the inconsistency is manifest and intolerable.

Tellingly, AT&T's and WorldCom's approach violates not only decades-old case

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[23] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Declaratory Ruling), 14 FCC Rcd. 3689, ¶ 15 (1999) (*subsequent history omitted*).

[24] Id. at ¶¶ 10, 12.

[25] Bell Atlantic Telephone Companies v. Federal Communications Commission, 206 F.3d 1, 5 (D.C. Cir. 2000).

law, but multiple provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). Initially, Section 276(b)(1)(A) provides for compensation only for payphone-originated calls which are "completed," not for calls which reach an intermediate switch regardless of whether they are answered by the called party.[26] Applying the methodology advocated by AT&T and WorldCom, switch-based resale carriers would be compelled to compensate PSPs for calls which never reach the called party – calls which all three carriers have long defined as

[26] 47 U.S.C. § 276(b)(1)(A).

"uncompleted" calls in dealing with both retail and wholesale customers.[27] The Commission, of course, has long held that "uncompleted calls should not be compensable."[28]

AT&T's and WorldCom's approach also violates Sections 201 and 202 of the Act. Section 201(b) prohibits carriers from assessing unjust or unreasonable rates or from engaging in unjust or unreasonable practices.[29] Section 202(a) declares unlawful any unjust or unreasonable discrimination by carriers in charges or practices.[30] Like AT&T, WorldCom and other network-based IXCs, switch-based resale carriers do not charge end-users for uncompleted calls. In the wireline industry, as the Commission has recognized, it is standard industry practice not to charge for either busy or unanswered calls.[31] Assessing a payphone surcharge on a call which reaches an intermediate switch, but not the called party, would thus impose a charge on the switch-based resale carrier for a call on which it will receive no compensation. As the Commission has previously acknowledged, it would "not be equitable" – *i.e.,* it would be unreasonable in violation of Section 201(b) – to require the compensation of PSPs "for calls that generated no revenues."[32] And this is particularly true

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[27] The large network-based IXCs would effectively be acting as agents of the PSPs in demanding compensation to which the PSPs are not entitled under the Act.

[28] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation (Report and Order), 6 FCC Rcd. 4736, ¶ 37 (1991) (*subsequent history omitted*).

[29] 47 U.S.C. § 201(b).

[30] 47 U.S.C. § 202(a).

[31] Petition for Declaratory Ruling on Issues Contained in Count I of White v. GTE, Class Action Complaint (Memorandum Opinion and Order), 16 FCC Rcd. 11558, ¶ 13 (2001) (*subsequent history omitted*).

[32] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation (Report and Order), 6 FCC Rcd. 4736 at ¶ 37.

where, as here, there is no legitimate cost basis for the charge, given that no amount is due to the PSP for originating an uncompleted call.[33]

AT&T's and WorldCom's approach is also discriminatory in violation of Section 202(a). Network service providers have long assessed payphone surcharges on non-facilities-based resale carriers for calls originated at payphones by their subscribers, and will undoubtedly continue to do so. Payphone surcharges will be levied on these non-facilities-based resale carriers only for completed calls, while under AT&T's and WorldCom's approach, payphone surcharges will be assessed on switch-based resale carriers for all payphone-originated calls, both completed and uncompleted. Likewise, network-based IXCs such as AT&T and WorldCom will only compensate PSPs for those payphone-originated calls carried by them which are completed, further discriminating against switch-based resale carriers. And the adverse impact of this latter form of discrimination would be compounded because switch-based resale carriers compete directly with network-based IXCs such as AT&T and WorldCom.

Finally, the violation of Section 202(a) could potentially extend beyond discrimination among carriers to discrimination among consumers. If switch-based resale carriers were to pass payphone surcharges through to their customers, these consumers would uniquely be assessed such charges on uncompleted calls. And those most directly impacted would likely be those least able to bear such charges. As the Commission has recognized, both payphones and prepaid calling cards tend to be used disproportionately by those of modest means -- *i.e.,* the poor and immigrant communities.[34]

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[33] Petition for Declaratory Ruling on Issues Contained in Count I of White v. GTE, Class Action Complaint (Memorandum Opinion and Order), 16 FCC Rcd. 11558 at ¶¶ 11, 14.

[34] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), 11 FCC Rcd. 20541 at ¶ 85; Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network (Notice of Proposed Rulemaking), 10 FCC Rcd. 13003, ¶ 39 (1995).

AT&T, joined by WorldCom, argues, however, that these violations are tolerable because the approach it and WorldCom advocate would be better for PSPs and switch-based resale carriers.[35] While it is indisputable that AT&T's and WorldCom's approach would be more favorable for PSPs, the advantage would be derived from collecting monies to which PSPs are not lawfully entitled. As to the purported advantage to switch-based resale carriers, ASCENT's resale carrier members have come to a very different conclusion, estimating that the additional costs associated with compensating PSPs for uncompleted calls -- both monetary and competitive -- would be substantial both for individual carriers and the resale carrier community as a whole.

For its part, WorldCom complains that if it is not permitted to levy charges for uncompleted calls, it will have to deal with data whose accuracy it may not be able to verify, data formatting and security issues, additional administrative burdens, and new cost requirements.[36] ASCENT is not unsympathetic with some of these complaints, although several, including data verification problems, formatting difficulties, and security concerns, are all matters resale carriers have had to address for years in dealing with network service providers such as AT&T and WorldCom. The answer, however, is not to impose phantom charges on a select group of smaller carriers in order to ease the lot of their far larger competitors. Instead, ASCENT urges the Commission to initiate a rulemaking proceeding to evaluate the potentially elegant solution to the problem proposed by Global Crossing.[37]

C. The Commission Should Initiate a Rulemaking To Evaluate Global Crossing's Proposed "Timing Surrogate"

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[35] AT&T Petition at 2 - 4; WorldCom Petition at 4.

[36] WorldCom Petition at 2 - 4.

[37] In the interim, ASCENT urges the Commission to make clear to network-based IXCs that they may not unilaterally redefine "completed calls" in assessing payphone compensation obligations on resale carriers, and that levying payphone surcharges on calls not answered by the called party is unlawful.

In its Petition, Global Crossing does not object to the Commission's assignment to network-based carriers of payphone call tracking and direct payment obligations.[38] Global Crossing, like AT&T and WorldCom, however, identifies the data visibility problems associated with implementing this approach. As correctly described by Global Crossing:

> Where two or more facilities-based carriers are handling a particular call, the first carrier hands off a call on an end-to-end basis. . . . The first IXC only knows that the second IXC has received the call, typically at a calling card or debit card platform. At that point, it loses visibility to the call and therefore cannot tell if the call has been completed to its ultimate destination.[39]

Recognizing that the Commission "has been clear that a completed call is only one that the ultimate recipient of the call has answered," Global Crossing suggests that the visibility problem might best be addressed through use of call timing surrogates.[40]

Global Crossing argues that "[t]he adoption of such a bright-line approach will substantially reduce - if not eliminate - controversy between underlying carriers, facilities-based resellers and PSPs over which calls are truly compensable."[41] Moreover, Global Crossing suggests that "use of timing surrogates would obviate the necessity for underlying carriers and their facilities-

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38 Global Crossing Petition at 3 - 4.

39 Id. at 4.

40 Id. at 4 - 5.

41 Id. at 6.

based resellers to develop systems that would permit both carriers to identify, on a call-by-call basis, whether an individual call was completed to the ultimate recipient."[42]

While Global Crossing's call-timing surrogate proposal could not be adopted without benefit of notice and comment rulemaking, ASCENT believes that the proposal merits strong consideration and urges the Commission to initiate an expedited rulemaking proceeding to address it.[43] As Global Crossing points out, timing surrogates have been used extensively (and successfully) in resolving litigation between PSPs and IXCs over payphone compensation levels.[44] Moreover, the Commission has sanctioned their use in other circumstances.[45] ASCENT recognizes that the Commission considered and rejected the use of timing surrogates when it first implemented Section 276.[46] ASCENT agrees with Global Crossing that it may well be time to revisit this determination.

-12 The Commission Should Reconsider/Clarify Other Elements of its *Second Order on Reconsideration*

A. The Commission Should Relax Its Newly-Adopted Reporting Requirements

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[42] Id.

[43] Among other issues that could be addressed in such a rulemaking are the appropriate call-timing thresholds. ASCENT believes that a surrogate of between 45 and 60 seconds would more accurately capture the line between completed and uncompleted calls. In a rulemaking, carriers could produce data to resolve this and other implementing matters.

[44] Global Crossing Petition at 5.

[45] Id.

[46] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), 11 FCC Rcd. 20541 at ¶ 63.

Each of AT&T, WorldCom and Global Crossing have petitioned the Commission to relax the reporting requirements newly-adopted in the *Second Order on Reconsideration*. The reporting requirement of which AT&T, WorldCom and Global Crossing complain are the statements carriers must send to each PSP "indicating the toll free and access code numbers for calls that the LEC has routed to the carrier, and the volume of calls for each toll-free and access code number that . . . [the] carrier has received from each of that PSP's payphones."[47] ASCENT concurs with AT&T, WorldCom and Global Crossing that these new reporting requirements would generate substantial costs for little benefit, and, accordingly, should be scaled back substantially.

Each of AT&T, WorldCom and Global Crossing details the additional cost and administrative burdens implementation of the new reporting requirements would entail, all emphasizing the thousands of PSPs and millions of payphones that would be encompassed by the requirements. Each also persuasively demonstrates that the new reports would be of minimal value; indeed, Global Crossing shows that in one significant respect -- *i.e.,* the potential for creating additional disputes -- the reports may well be counterproductive.

ASCENT's principal concern with respect to the newly-adopted reporting requirements is with the indirect burden they will likely impose on all resale carriers, and the direct burden they will create for switch-based resale carriers that undertake call tracking and payment obligations through private contractual arrangements with PSPs. As to the former, some portion of the additional costs that the new reporting requirements will create for network-based IXCs will undoubtedly be passed through in some part to all resale carriers, non-facilities-based and switch-based resale carriers alike, in the form of increased charges. With respect to the latter, switch-based resale carriers that contract directly with PSPs will bear the same cost and administrative burdens

[47] The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Second Order on Reconsideration), CC Docket No. 96-128, NSD File No. L-99-34, FCC 01-109, ¶ 18 (released April 5, 2001) (*subsequent history omitted*).

borne by network-based IXCs, and because of their generally far smaller resources, will be even less able to absorb those burdens.

Accordingly, ASCENT joins with AT&T, WorldCom and Global Crossing in urging the Commission to relax the reporting requirements newly-adopted in the *Second Order on Reconsideration*.

B. The Commission Should Clarify Its Rules in The Additional Respects Requested by Global Crossing

Global Crossing seeks clarification of two additional elements of the Second Order on Reconsideration. First, Global Crossing urges the Commission to clarify that only those switch-based resale carriers that have assumed the payphone call tracking and direct payment obligations that would otherwise be borne by the network-based IXCs should be permitted to enter into contractual compensation arrangements with PSPs.[48] Second, Global Crossing asks the Commission to clarify that in the absence of a contractual compensation arrangement authorizing such actions, PSPs should not be permitted to invoice IXCs for amounts purportedly due for originating toll free or access code calls.[49] ASCENT agrees with Global Crossing in both instances.

With respect to Global Crossing's first request, ASCENT reads the *Second Order on Reconsideration* to implicitly include the limitation Global Crossing seeks. ASCENT assumes that the "current or future contractual arrangements [which PSPs] . . . may have with underlying facilities-

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[48] Global Crossing Petition at 10 - 11.

[49] Id. at 11 - 12.

based carriers or resellers" would necessarily include call tracking and direct payment obligations.[50] Accordingly, ASCENT concurs in Global Crossing's clarification request.

As to Global Crossings second request, ASCENT agrees that the burden borne by the payphone call tracking and direct payments obligations borne by network-based IXCs, as well as certain switch-based resale carriers, should not be further complicated by unilateral actions undertaken by PSPs. PSP invoicing, generally based as it is on bad data, has resulted in needless controversy and litigation, unnecessarily sapping carrier resources. ASCENT concurs with Global Crossing that the Commission, having imposed on IXCs call tracking and direct billing obligations, should "forcefully remind the PSPs that there is no role in the current per-call compensation regime for the PSPs to 'invoice' carriers for per-call compensation."[51]

[50] The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Second Order on Reconsideration), CC Docket No. 96-128, NSD File No. L-99-34, FCC 01-109 at ¶ 19.

[51] Global Crossing Petition at 12.

III. Conclusion

By reason of the foregoing, the Association of Communications Enterprises urges to grant in part and deny in part, consistent with the above, the Petition for Clarification and/or Reconsideration filed by AT&T, the Petition for Declaratory Ruling and Petition for Reconsideration filed by WorldCom, and the Petition for Reconsideration and Clarification filed by Global Crossings in this proceeding.

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

By: /s/

Charles C. Hunter
Catherine M. Hannan
HUNTER COMMUNICATIONS LAW GROUP
1424 Sixteenth Street, N.W.
Suite 105
Washington, D.C. 20036
(202) 293-2500

October 9, 2000

Its Attorneys

CERTIFICATE OF SERVICE

I, Charles C. Hunter, do hereby certify that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, on the individuals list on this 9th day of October, 2001:

Mark C. Rosenblum
Richard H. Rubin
AT&T Corp.
Room 1127M1
295 N. Maple Avenue
Basking Ridge, NJ 07920

Larry Fenster
WorldCom, Inc.
1133 19th Street, N.W.
Washington, DC 20036

Michael J. Shortley, III
Global Crossing Telecommunications, Inc.
180 South Clinton Avenue
Rochester, New York 14646

_____/s/_____
Charles C. Hunter